THE HIGH COURT OF UTTRANCHAL AT NAINITAL

Appeal from Order No. 1481 of 2001.

M/S Cheema papers Limited, Kashipur Udham singh Nagar through its Director.

…Appellant.

Vs.

Bachi Ram S/O Sri Hari Ram R/O C/O Sri Anand Ram, Gali No.2 Kulyal Pura Haldwani (Nainital).

…Respondent.

Sri Gopal Narayan, learned counsel for the appellant.
None appeared for the respondent.

Date November 10, 2006
P.C.: Hon'ble B.S. Verma, J.

This appeal under Section 30 of the Workmen's Compensation Act 1923 ***(for short the Act)*** is directed against the judgment and award dated 27-8-2001 passed by the Workmen Compensation Commissioner, Kumaon Region, Haldwani (Nainital) ***(for short the Commissioner)*** in W.C.A Case No. 50 of 1999 Bachi Ram Vs. M/s Cheema papers Ltd. Kashipur, whereby compensation of Rs. 1,34,334/- was granted in favour of the workman payable by the employer-appellant.

Relevant facts of the case are that the workman Bachi Ram moved claim petition for compensation of Rs. 2,15,280/- on account of accidental injuries suffered by him in the course of his employment on 4-2-1999 inside the factory, with the result he became permanently disabled and he was removed from the employment on account of the same. The claimant has alleged that he was working as Fitter in the factory on the fateful day. He was getting Rs. 2400/- per month as wages and he was aged 26 years, 9 months, therefore, compensation of Rs. 2,15,280/- was claimed by the workman from the employer.

The employer filed its written statement and denied the allegations made in the claim petition. The relationship of master and servant was also denied. The workman-claimant substantiated

his claim by his oral evidence before the leaned Commissioner. The employer-O.P. also led oral evidence before the learned Commissioner to prove that the claimant was not a workman of the opposite party. After considering the entire evidence on record, the learned Commissioner has accepted the claim for compensation of Rs. 1,32,334/- in favour of the claimant and accordingly decreed the claim petition against the employer vide order dated 29-8-2001.

The only ground of challenge raised by the appellant is that the respondent-workman has failed to prove that he was a workman under the employment of appellant.

I have gone through the impugned judgment and award passed by the learned Commissioner. The learned Commissioner has elaborately discussed the evidence led by both the parties. It was observed by the learned Commissioner that the failure of employer to produce the documents in its possession before the Court was a strong circumstance against the employer. It is pertinent to mention that although the employer-O.P. has produced as many as three witnesses before the Commissioner, but when cross-examined on behalf of the claimant, they could not give a satisfactory reply and they failed to give relevant details.

It is significant to mention that the written statement was filed by the Director of the factory before the learned Commissioner and in the written statement the employment of the workman was denied, but the said Director could not dare come in the witness box to state the truth that claimant Bachi Ram was not an employee of the factory. The learned Commissioner has rightly observed that substantial information in possession of the opposite party was withheld by the employer. In such circumstances, the employer failed to discharge its burden and an adverse inference was rightly drawn against the opposite party. As a result of the accidental injuries suffered by the workman, he became

incapacitated to do the job of Fitter and also lost his employment at young age of 27 years, therefore, the compensation has been correctly worked out by the Commissioner. It has not been shown by the employer that the disablement of the claimant was not of permanent nature.

Moreover, the grounds taken in the memo of appeal touch the finding of fact. No substantial question of law was formulated in the memo of appeal. I do not find any substantial law to be involved in the present appeal, therefore, even on that account the appeal is not maintainable.

In view of the discussion aforesaid, I do not find any illegality or perversity in the impugned award. The award under appeal is fully based on the evidence on record. There is no merit in this appeal.

The appeal is dismissed. The judgment and award under challenge is upheld. The amount in deposit with the Workmen Compensation Commissioner Haldwani, if any, shall be released in favour of the claimant-respondent.

(B.S.Verma,J.)

RCP